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12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 THOMAS HAGEDORN, on behalf of
16 himself and all others similarly situated,

17 Plaintiff,

18 v.

19 NEST LABS, INC.,

20 Defendant.

Case No. 3:14-cv-00755-JST

**DEFENDANT NEST LABS, INC.'S
OPPOSITION TO ADMINISTRATIVE
MOTION TO RELATE CASES**

Judge: Hon. Jon S. Tigar

Complaint Filed: February 19, 2014

1 INTRODUCTION

2 Pursuant to Northern District Local Rules 3-12 and 7-11, Defendant Nest Labs, Inc.¹
3 hereby opposes Justin Darisse’s Administrative Motion to Relate *Darisse v. Nest Labs, Inc.*, Case
4 No. 3:14-CV-01363-JSW, filed on March 25, 2014 (“*Darisse*”), to *Hagedorn v. Nest Labs, Inc.*,
5 Case No, 3:14-CV-00755-JST, filed on February 19, 2014 (“*Hagedorn*”).² As explained further
6 below, relation of the cases is unwarranted because they involve entirely different claims of
7 alleged product defects, and to the extent that the cases proceed past the pleadings stage,
8 resolution of each action will turn on different facts and issues. Accordingly, allowing the cases
9 to proceed before different Judges will not result in duplication of labor or inconsistent results.

10 ARGUMENT

11 Civil Local Rule 3-12 provides that “[a]n action is related to another when: (1) The
12 actions concern substantially the same parties, property, transaction or event; and (2) It appears
13 likely that there will be an unduly burdensome duplication of labor and expense or conflicting
14 results if the cases are conducted before different Judges.” Neither factor is present here.

15 Although both cases are class actions brought against Nest Labs, Inc. alleging defects in
16 the Nest Learning Thermostat, the similarities end there. The Nest Learning Thermostat is a
17 small but powerful computer containing industry-leading technology. Nest Labs, Inc., the maker
18 of the thermostat, is a Defendant in both actions, but the cases do not share common plaintiffs and
19 therefore do not involve the same “parties.” Civ. L. R. 3-12(1). Nor do the cases concern real or
20 intellectual “property.” *Id.* Moreover, as explained further below, the cases involve
21 fundamentally different aspects of the Nest thermostat’s technology and different alleged
22 misrepresentations in Nest’s advertisements.³ Accordingly, the *Hagedorn* and *Darisse* cannot be
23 said to concern the same “transaction or event.” *Id.*

24 ¹ On February 7, 2014, Google Inc. acquired Nest Labs, Inc.

25 ² Defendant Nest Labs, Inc. was not served with Plaintiff’s Motion as required by Civil Local
26 Rule 3-12(b). By filing this opposition, Defendant does not waive its right to challenge Plaintiff’s
failure to serve the motion.

27 ³ Undersigned counsel has conferred with counsel for the *Hagedorn* class, Phyllis
28 Norman. *Hagedorn* counsel’s position is that the defect alleged in *Hagedorn* is different from the
defect alleged in *Darisse*.

1 Nor does it “appear[] likely that there will be an unduly burdensome duplication of labor
2 and expense or conflicting results if the cases are conducted before different Judges.” Civ. L. R.
3 3-12(2). The gravamen of the *Hagedorn* Complaint relates to alleged failures in the Nest
4 thermostat’s power source. Plaintiff in the *Hagedorn* case alleges that the Nest thermostat draws
5 a battery charge by sharing power from certain wires connected to the user’s heating and air
6 conditioning unit—rather than requiring installation or use of a dedicated power wire (known as a
7 “C” wire) like other “smart” thermostats—and that Nest’s battery eventually dies and causes the
8 device to fail. *Hagedorn*, Dkt. 20 at ¶13-30.

9 The *Darisse* Complaint, on the other hand, asserts that the Nest thermostat cannot
10 correctly gauge the ambient temperature in a room because its base and faceplate heat up, causing
11 the thermostat to calculate that the ambient temperature is warmer than the true ambient
12 temperature. *Darisse*, Dkt.1 at ¶3-4. The Plaintiff alleges that, as a result, Nest users’ air
13 conditioners cool households more than necessary, thereby causing users’ energy costs to
14 increase. *Id.* The *Darisse* complaint does not mention the “C” wire and does not allege defects in
15 the Nest thermostat’s power source.

16 Because the actions turn on the resolution of distinct facts relating to different
17 technologies within the device, to the extent that the cases require discovery and motion practice,
18 they are unlikely to overlap much at all. *See ESS Tech., Inc. v. PC-Tel, Inc.*, C-99-20292 RMW,
19 2001 WL 1891713, at *6 (N.D. Cal. Nov. 28, 2001) (denying motion to relate cases under Civil
20 Local Rule 3-12 where cases shared a common issue but resolution of the issue was “dependent
21 of a multitude of case-specific facts and issues”). Nor do the two cases contain identical causes
22 of action or legal theories. *Darisse*, Dkt. 1 at 22-29 (alleging, among other things, violations of
23 the California False Advertising Law, Breach of Express Warranty, Breach of the Implied
24 Warranty of Merchantability, and Breach of the Implied Warranty of Fitness for a Particular
25 Purpose); *Hagedorn*, Dkt. 20 at 8-11 (containing no such allegations). Tellingly, Plaintiff’s one-
26 paragraph notice makes no showing whatsoever that there are efficiencies to be gained by having
27 both cases heard by a single Judge. *Hagedorn*, Dkt. 19 at 1.

28 In the absence of such a showing, interpreting Local Rule 3-12 to allow for relation of

1 these cases would mean that cases could be related before a single Judge whenever they involved
2 the same product, regardless of the differences between the claims. Plaintiff has not cited any case
3 interpreting the Rule so broadly and doing so would not result in increased judicial efficiency.

4
5 **CONCLUSION**

6 For the foregoing reasons, Defendant Nest Labs, Inc. respectfully requests that the Court
7 DENY Plaintiff's Motion to Relate Cases.

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9 Dated: April 1, 2014

KEKER & VAN NEST LLP

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11 By: /s/ Simona A. Agnolucci
SIMONA A. AGNOLUCCI

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13 Attorneys for Defendant
NEST LABS, INC.